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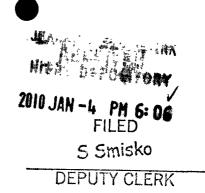
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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

Cause No. P1300CR20081339 Division 6 STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE STEVEN CARROLL DEMOCKER, THE TESTIMONY AND REPORT OF RICHARD ECHOLS AND ALL Defendant. **TESTIMONY RELEVANT TO F(12)** AGGRAVATOR

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion in Limine to Preclude the Testimony and Report of Richard Echols and all Testimony Relevant to F(12) Aggravator and requests that Defendant's Motion be denied. The State's Response is supported by the following Memorandum of Points and Authorities.

MEMORNDUM OF POINTS AND AUTHORITIES

Mr. Echols is expressly qualified to give testimony regarding Defendant's and Carol I. Kennedy's financial condition prior to and on the date of Carol's murder.

Arizona Rules of Evidence, Rule 702 provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or

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education, may testify thereto in the form of an opinion or otherwise." "The party offering expert testimony must show that the witness is competent to give an expert opinion on the precise issue about which he is asked to testify." *Gaston v. Hunter*, 121 Ariz. 33, 51, 588 P.2d 326, 344 (Ariz. App. 1978).

Richard Echols has a Bachelor's Degree in Accounting, is a Certified Public Accountant, has been certified in Financial Forensics, and is a Certified Fraud Examiner who has over 30 years experience in the fields of accounting, auditing, and fraud examination. Also, Mr. Echols has previously served as an expert witness in Arizona courts in cases involving accounting and criminal fraud. Contrary to Defendant's assertions, this "knowledge, skill, experience, training, [and] education" leaves Mr. Echols expressly qualified to give expert testimony to assist the trier of fact in determining whether Defendant's crumbling financial condition was the incentive for Carol's brutal murder. Mr. Echols' thorough review of the couple's joint and individual financial documents led him to conclude that a "perfect storm" had been brewing for Defendant in the months prior to July 2, 2008, and that Defendant did not possess the financial means to satisfy his significant debts. With Carol dead, Defendant was freed from the \$6,000 a month spousal support payments and, had he not been suspected of the murder, would have had access and control over the \$750,000 from Carol's life insurance policies as well the remainder of Carol's estate. Furthermore, Defendant and Carol were arguing vigorously over the final disposition of Defendant's 401K in the approximate amount of \$190, 000 and how any excess monies over the court ordered payment from the 401K should be apportioned between the two of them.

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II. The testimony given in support of the (F)(12) aggravator is relevant to Defendant's motive.

Defendant requests that the Court preclude any testimony given at the *Chronis* Hearing is support of the (F)(12) aggravator. While the Court struck that particular aggravator, the testimony given regarding the false information Defendant provided to the divorce court and to the Internal Revenue Service is also relevant to Defendant's motive for killing Carol. Although motive is not an element of premeditated murder, *State v. Tuttle*, 58 Ariz. 116, 118 P.2d 88 (1941), "it is well settled that in a murder prosecution the presence or absence of motive is relevant." *State v. Hunter*, 136 Ariz. 45, 50, 664 P.2d 195, 200 (1983).

[T]he fact that the defendant had some motive, good or bad, for committing the crime is one of the circumstances which, together with other circumstances, may lead the fact-finder to conclude that he did in fact commit the crime; whereas lack of any discernable motive is a circumstance pointing in the direction of his innocence.

Id. (citation omitted).

Here, all of the recently divorced couple's financial records, the bank statements, the credit card statements, the loan and mortgage documents, Defendant's earnings report, the tax returns, the documents related to Defendant's book of business, as well as the documents filed in the divorce proceedings¹, are material to Defendant's motive. As these documents number in the thousands, an expert who can assist the trier of fact sort through the mountain of evidence is essential. Moreover, Echols' opinion testimony regarding the conclusions he derived from his review of the documents is necessary to provide the trier of fact with a complete picture of Defendant's financial condition.

¹ This list is only a sample of the relevant documents and is not inclusive of all documents the State may seek to introduce at either the guilt or penalty phase of the trial.

Office of the Yavapai County Attorney

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CONCLUSION:

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Whereas Mr. Echols' report and testimony regarding Defendant's complete financial circumstances will assist the trier of fact to understand the evidence and to determine the facts in issue, the testimony should not be limited to preclude information regarding tax returns and documents provided to the divorce court. Defendant's Motion should be denied.

RESPECTFULLY SUBMITTED this ______ January, 2010.

Sheila Spillivan Polk
YAVAPAL COUNTY ATTORNEY

By: Suna / l. /

Joseph C. Butner

Deputy County Attorney

COPIES of the foregoing delivered this day of January, 2010 to:

Honorable Thomas J. Lindberg

Division 6

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